

Opening Remarks
before the
Select Committee on Intelligence of the
United States Senate
by
Frederic F. Manget
Deputy General Counsel
Central Intelligence Agency

31 July 2002

For over twenty years, the Foreign Intelligence Surveillance Act (FISA) has defined how the Intelligence Community conducts electronic surveillance – and, for nearly a decade, physical searches – that target spies, terrorists, and other individuals of foreign intelligence interest operating within the United States. Since FISA's enactment, however, these targets and their means of communication have changed. Intelligence Community collection efforts are increasingly challenged by the shifting nature of intelligence targets. Sensible amendments to FISA will forward Intelligence Community efforts to collect crucial foreign intelligence against these nimble targets.

Mr. Chairman . . . Mr. Vice-Chairman . . . I would like to thank the Committee for its swift legislative action in the wake of the heinous terrorist attacks of September 11, 2001. Legislation introduced by the Chairman, considered by this Committee, and ultimately included in the USA PATRIOT Act of 2001, removed artificial statutory barriers to law enforcement information sharing with the Intelligence Community and clarified the authorities of the DCI with respect to FISA. The USA PATRIOT Act enhanced the ability of intelligence to coordinate

with law enforcement and, consistent with the protection of the civil liberties of U.S. persons, improved the ability to collect foreign intelligence under FISA. I appreciate the opportunity to represent the DCI as this Committee considers two pending bills that also propose sensible amendments to FISA.

- S. 2586 – proposed by Senators Schumer and Kyl – would amend FISA to permit targeting of foreign nationals engaged in international terrorism or activities in preparation for international terrorism, even without evidence that the foreign national is operating as an agent of a foreign group, such as al-Qa’ida.
- S. 2659 – proposed by Senator DeWine – would lower the burden of proof for securing a FISA order against a foreign national from “probable cause” to “reasonable suspicion”.

Both these bills would increase the ability of the U.S. Government to collect information concerning foreign nationals of foreign intelligence interest within the United States. Through access to the intelligence collected under these proposed authorities, the Intelligence Community would be better able to inform the decisions of policy makers and war fighters. The DCI generally supports statutory changes that – consistent with the Constitution – would enhance our ability to use FISA as a collection tool and to prevent potential terrorist attacks. We have reviewed and support the changes proposed in S. 2586; however, the Administration is still studying S. 2659 and is not prepared to take a position on that bill. In addition, we would defer to the Department of Justice for the final Constitutional analysis of both bills.

Terrorists who would harm this nation should not be able to conduct their activities under the protective cloak of unnecessarily restrictive FISA requirements that have not kept pace with changes in the nature of our enemies. Balancing the civil liberties of U.S. persons against the

President's Constitutional authorities to protect national security was the overriding concern of Congress when the FISA was passed. These amendments would refine this delicate balance to better account for current operational realities without damaging important privacy equities of Americans. It is my understanding that the Department of Justice believes the amendment proposed by S. 2586 conforms to Constitutional principles; however, I am not aware that they have reached a decision on the potential Constitutional impact of S. 2659.

Thank you, again, for the opportunity to testify regarding these proposals. We look forward to working with the Administration and Congress to discuss these and other needed improvements to intelligence capabilities – carefully balancing the interests of national security with the privacy rights guaranteed by the Constitution.